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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

AMERICAN SURETY COMPANY,

Defendant and Appellant.

B203165

(Los Angeles County
Super. Ct. No. SJ002888)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Luis A. Lavin, Judge. Affirmed.

Nunez & Bernstein and E. Alan Nunez for Defendant and Appellant.

Raymond G. Fortner, Jr., Brian T. Chu, Principal Deputy County Counsel,
for Plaintiff and Respondent.

Defendant American Surety Company (American) appeals from the superior court's denial of its motion to vacate a forfeiture of bail and vacate summary judgment in favor of the County of Los Angeles (the County). We affirm.

BACKGROUND

American issued a bail bond of \$100,000 to secure the court appearance of Man Singh Mann, who was charged by felony information with attempted lewd conduct on a child (Pen. Code, §§ 664/288, subd. (c)(1))¹ and other related offenses. Mann appeared at his post-preliminary hearing arraignment on January 19, 2006, represented by retained counsel. He pled not guilty, and the court set a pretrial conference date of February 8, 2006, and a trial date of March 9, 2006.

On February 8, the pretrial conference was continued to February 15, and Mann, who was present with counsel, was ordered to return. On February 15, noting that no resolution had been reached in the case, the court continued the matter to the trial date of March 9, and ordered Mann to appear. According to the court minutes, if a resolution was reached before the trial date, counsel could request that the case be advanced for disposition.

On the trial date, March 9, the court granted the prosecution's motion to continue the trial to April 17, and ordered defendant to appear. Later, on April 7, at the request of defense counsel, the case was calendared for April 11. The request was apparently made without any formal appearance. The minutes simply state: "At the request of defense counsel, this matter is advanced and calendared for possible disposition on 04/11/2006, at 8:30 a.m. . . . Defense counsel to give notice."

¹

All undesignated section references are to the Penal Code.

On April 11, defendant did not appear. The court's minutes state: "[Mann] fails to appear as instructed by defense counsel." According to the reporter's transcript, the following occurred:

"THE COURT: Who asked to put this on calendar?

"[DEFENSE COUNSEL]: I did.

"THE COURT: And your client is where?

"[DEFENSE COUNSEL]: He's not here. I'm not sure where he is. We reached a deal about a week, week-and-a-half ago for my client to be here. I'm not sure where he is.

"

"THE COURT: . . . Well, . . . since I didn't order him here, there's nothing I can do except leave it on calendar for April 17th. I can't issue a warrant. . . . I didn't order him in here for today's date. . . . Mr. Mann is not present, but he wasn't ordered to be here. He was ordered to be here April 17th for trial. So that date remains and bail to stand until that date. Obviously if he doesn't show up on the 17th, then I can issue a warrant."

On the trial date, defendant failed to appear. The court forfeited bail and issued a bench warrant. The next day, April 18, the court sent notice of the forfeiture to American.

Thereafter, American applied for and received two 60-day extensions of the 185-day period within which to move to set aside the bond forfeiture. On March 26, 2007, the court entered summary judgment for the County on the bond. American later moved to set aside the forfeiture and the summary judgment. On September 21, 2007, the court denied the motion.

DISCUSSION

American contends that the superior court lost jurisdiction to declare a forfeiture of Mann's bail when it failed to declare the forfeiture on April 11, the date scheduled at the request of defense counsel for a possible disposition. We disagree.

Section 1305, subdivision (a), provides in relevant part: "A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following: [¶] (1) Arraignment. [¶] (2) Trial. [¶] (3) Judgment. [¶] (4) *Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.* [¶] (5) To surrender himself or herself in execution of the judgment after appeal." (Italics added.) The court must declare a bond forfeited when required by section 1305, or it loses the power to do so. (*People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898, 907; *People v. Aegis Security Ins. Co.* (2005) 127 Cal.App.4th 569, 573.)

Here, American relies on *People v. Sacramento Bail Bonds* (1989) 210 Cal.App.3d 118 (*Sacramento*) to argue that the proceeding scheduled for April 11 was one at which defendant's appearance was lawfully required, and that the court was therefore obligated by section 1305, subdivision (a)(4), to forfeit the bond on that date. In *Sacramento*, the defendant and his attorney were present when the court set a trial status conference and a trial date. The court did not specifically order the defendant to appear. When the defendant failed to appear for the status conference, the court forfeited bail and issued a bench warrant. On appeal from denial of its motion to vacate the forfeiture, the bonding company argued that the court had no power to declare a bail forfeiture, because the defendant had not been

ordered to appear, and, therefore, his appearance was not “lawfully required” within the meaning of section 1305. (*Id.* at p. 120.)

The appellate court rejected the argument, concluding that the trial status conference constituted a “readiness conference” under former rule 227.6 (now rule 4.112) of the California Rules of Court, at which defendant’s appearance was required. The former rule provided: ““A readiness conference shall be held within one to fourteen days before the date set for trial. Trial counsel shall appear and be prepared to discuss the case and determine whether the case can be disposed of without trial. The prosecuting attorney shall have authority to dispose of the case, and the defendant shall be present in court.”” (*Sacramento, supra*, 210 Cal.App.3d at p. 121.)² Noting that the defendant was present in court with counsel when the status conference was set, the court in *Sacramento* concluded: “We think that this advice [of the date and time of the status conference], together with the operation of rule 227.6, clearly made defendant’s presence at the trial status conference ‘lawfully required’ within the meaning of subdivision (a) of section 1305, since the trial court could rely upon ‘the good faith and good judgment of defense counsel’ [citation] to inform defendant that his presence was required.” (*Id.* at p. 121.)

² Current rule 4.112 also requires the defendant’s appearance at the readiness conference. It provides:

“(a) Date and appearances

“The court may hold a readiness conference in felony cases within 1 to 14 days before the date set for trial. At the readiness conference:

“(1) All trial counsel must appear and be prepared to discuss the case and determine whether the case can be disposed of without trial;

“(2) The prosecuting attorney must have authority to dispose of the case; and

“(3) *The defendant must be present in court.*

“(b) Motions

“Except for good cause, the court should hear and decide any pretrial motion in a criminal case before or at the readiness conference.” (*Italics added.*)

Sacramento is distinguishable. First, in *Sacramento*, nothing in the record suggested that the pretrial conference was anything other than the readiness conference contemplated by former rule 227.6. Here, by contrast, the court-ordered pretrial conference occurred on February 15. Mann was present with counsel on that date, and the court ordered him to appear for the March 9 trial date, which was later continued on the prosecution's motion (with defendant again being ordered to appear) to April 17. The April 11 proceeding, on the other hand, was calendared at the request of defense counsel on April 7, without any formal appearance. According to the court minutes of April 7, the purpose of the April 11 proceeding was solely for a "*possible disposition.*" (Italics added.)

Second, unlike the defendant in *Sacramento*, Mann was not present in court when the April 11 date was set. The minutes reflect that defense counsel was to give notice of the April 11 proceeding, but the minutes give no indication that the court intended to require defendant to appear or that the proceeding was considered a readiness conference within the meaning of current rule 4.112. Thus, there is no basis on which to infer that the court should have understood that defense counsel would inform Mann that his personal appearance was required. Indeed, at the April 11 proceeding, defense counsel informed the court that "*we [meaning the prosecution and defense] reached a deal about a week, week-and-a-half ago for my client to be here.*" (Italics added.) That the prosecution and defense had reached a deal for Mann to appear in court did not mean that Mann's appearance was legally required. Moreover, the court's comments at the hearing show that the court did not consider the proceeding to be one at which Mann's appearance was required.

Under these circumstances, we conclude that the April 7 date was not a readiness conference under rule 4.112 at which Mann's presence was legally required. The decision in *People v. Ranger Ins. Co.* (1992) 6 Cal.App.4th 1301

(*Ranger*) is instructive. There, the defendant was present at arraignment when the court scheduled a proceeding designated as a “Narcotics Case Review,” or “NCR,” and a trial date. (*Id.* at p. 1304.) The defendant failed to appear for the trial date, and the court forfeited his bail. Appealing the denial of its motion to vacate the forfeiture, the bonding company contended that the NCR date constituted a readiness conference at which the defendant was required to appear. According to the bonding company, the defendant had failed to appear on that date, and section 1305 therefore required the bail forfeiture to occur on the NCR date, not the trial date.

The judge who handled the NCR calendar stated in a declaration filed in the trial court that defendants were not required to appear on the NCR date. According to the judge, the trial readiness conferences occurred on the Friday before the trial date, and the NCR did “not function as a trial readiness calendar, but as time for optional discussion of resolution of cases.” (*Ranger, supra*, 6 Cal.App.4th at p. 1304.) The appellate court held, in part, that the NCR date did not constitute a readiness conference under former rule 227.6: “[I]n light of the uncontradicted evidence . . . , it is clear that the NCR calendar provides an opportunity for disposition in addition to the rule 227.6 hearing, which takes place on the Friday before trial.” (*Id.* at p. 1305.)

We find the April 11 proceeding in the instant case analogous to the NCR proceeding in *Ranger*. Here, as far as the court was concerned, the April 11 proceeding, as calendared, was for “possible disposition.” In other words, it provided an opportunity for disposition in addition to the previously held court-ordered pretrial conference of February 15. The court’s comments on April 11 leave no doubt that the court had not required Mann to appear on that date. Thus, we conclude that the April 11 proceeding was not a readiness conference under

rule 4.112 at which Mann's appearance was legally required. Because Mann was not legally required to appear on April 11, the court did not lose jurisdiction to declare his bail forfeited on April 17, when he failed to appear for trial.

DISPOSITION

The order denying the motion to vacate forfeiture of bail and summary judgment is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.